



22 CFR Part 120

[Public Notice: 11443]

International Traffic in Arms Regulations: Notification of Temporary Suspensions, Modifications, and Exceptions to Regulations

AGENCY: Department of State.

ACTION: Extension of temporary suspensions, modifications, and exceptions.

SUMMARY: The Department of State is issuing this document to inform the public of a third extension to temporary suspensions, modifications, and exceptions to certain provisions of the International Traffic in Arms Regulations (ITAR) to provide for continued telework operations during the current SARS-COV2 public health emergency. This action is taken in order to ensure continuity of operations among members of the regulated community.

DATES: This document is issued [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-1809, or e-mail ddtccustomerservice@state.gov. ATTN: Extension of Suspension, Modification, and Exception - Telework.

SUPPLEMENTARY INFORMATION: In March 2020 a national emergency was declared as a result of the COVID-19 pandemic. On May 1, 2020, the Department of State (the Department) published in the *Federal Register* a notification of certain temporary suspensions, modifications, and exceptions to the ITAR, that were necessary to ensure continuity of operations within the Directorate of Defense Trade Controls (DDTC) and among entities registered with DDTC pursuant to part 122 of the ITAR (85 FR 25287). These actions were taken pursuant to ITAR § 126.2, which allows for the temporary suspension or modification of provisions of the ITAR, and ITAR § 126.3, which allows for exceptions to provisions of the ITAR. These actions were

taken in the interest of the security and foreign policy of the United States and were warranted due to the exceptional and undue hardships and risks to safety caused by the public health emergency related to the SARS-COV2 pandemic.

Subsequently, on June 10, 2020 (85 FR 35376), the Department published in the *Federal Register* a request for comment from the regulated community regarding the efficacy and termination dates of the temporary suspensions, modifications, and exceptions provided in 85 FR 25287, and requesting comment as to whether additional measures should be considered in response to the public health crisis. Of the four temporary suspensions, modifications, and exceptions to the ITAR announced in the May 1 notification referenced above, DDTC reviewed the public comments and decided to extend two measures until December 31, 2020: 1) ITAR § 120.39(a)(2) allowance for remote work; and 2) authorization to allow remote work under technical assistance agreement, manufacturing agreement, or exemption.

Based upon continued public health recommendations and as informed by responses to the request for public comment in June 2020, it is apparent to DDTC that regulated entities will continue to engage in telework for the foreseeable future. Many commenters, one industry association, and several individual entities endorsed the telework provisions and requested that these measures be extended, potentially indefinitely. DDTC agreed and extended the two measures because DDTC believed that a failure to extend the temporary suspensions, modifications, and exceptions would have a negative impact on regulated entities' ability to safely engage in continued operations in the midst of the ongoing global public health emergency. Based upon the comments received and DDTC's experience over the course of the pandemic, it is apparent that these measures support the current work environment and are expected to remain relevant in a post-pandemic environment.

Although the Department is of the opinion that the notice and comment requirements of the Administrative Procedure Act are not applicable, in addition to the efforts described above, the Department published a notice of proposed rulemaking (NPRM) (86 FR 28503, May 27,

2021), to solicit comments to proposed revisions to the ITAR provisions related to remote work. DDTC is seeking in this proposed rule to adapt to the new reality of how the regulated community is working and will work in the future. DDTC's position is consistent with the Arms Export Control Act and informed by the regulated community's comments and DDTC's assessment of the security requirements appropriate for ITAR-controlled technical data. The NPRM is entitled "Amendment to the International Traffic in Arms Regulations: Regular Employee" (RIN 1400-AF17). In the interest of ensuring sufficient time to adequately address comments and prepare publication of a final rule, and to ensure there is no disruption of regulated entities' ability to safely engage in continued operations, DDTC is modifying and extending these temporary suspensions, modifications, and exceptions until it publishes a final rule for RIN 1400-AF17; the Department intends to terminate the temporary actions announced herein in that *Federal Register* publication.

DDTC notes that the text of the temporary suspensions, modifications, and exceptions below differs slightly from that of the prior two documents in that specific reference to Russia has been removed from the clause "so long as the individual is not located in a country listed in ITAR § 126.1." By rulemaking of March 18, 2021, DDTC amended ITAR § 126.1 to include Russia (86 FR 14802), thereby making specific reference here unnecessary.

Pursuant to ITAR §§ 126.2 and 126.3, in the interest of the security and foreign policy of the United States and as warranted by the exceptional and undue hardships and risks to safety caused by the public health emergency related to the SARS-COV2 pandemic, notice is provided that the following temporary suspensions, modifications, and exceptions are being extended as follows:

1. As of March 13, 2020, a temporary suspension, modification, and exception to the requirement that a regular employee, for purposes of ITAR § 120.39(a)(2), work at the company's facilities, to allow the individual to work at a remote work location, so long as the individual is not located in a country listed in ITAR § 126.1. The Department will

terminate this suspension, modification, and exception by publication of a document in the *Federal Register*.

2. As of March 13, 2020, a temporary suspension, modification, and exception to authorize regular employees of licensed entities who are working remotely in a country not currently authorized by a technical assistance agreement, manufacturing license agreement, or exemption to send, receive, or access any technical data authorized for export, reexport, or retransfer to their employer via a technical assistance agreement, manufacturing license agreement, or exemption so long as the regular employee is not located in a country listed in ITAR § 126.1. The Department will terminate this suspension, modification, and exception by publication of a document in the *Federal Register*.

This document makes no other revision to the document published at 85 FR 25287, nor does it make any other temporary suspension, modification, or exception to the requirements of the ITAR.

(Authority: 22 CFR 126.2 and 126.3)

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U.S. Department of State.

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